Supreme Court, U.S.
FILED
APR 20 1993
OFFICE OF THE CLERK

No. 92-1451

IN THE

Supreme Court of the United States

October Term, 1992

TRAVELLERS INTERNATIONAL AG.,
Petitioner,

v.

TRANS WORLD AIRLINES, INC.,
OFFICIAL UNSECURED CREDITORS' COMMITTEE
OF TRANS WORLD AIRLINES, INC., AND
SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION FOR RESPONDENT TRANS WORLD AIRLINES, INC.

WILLIAM B. B. SMITH
JONES, DAY, REAVIS & POGUE
3500 One Peachtree Center
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3242
(404) 521-3939

Counsel of Record

MICHAEL J. TEMPLETON
MARIANN MORGAN
ROBIN C. MURRAY-GILL
JONES, DAY, REAVIS & POGUE
NEW YORK, NEW YORK

KENNETH J. NACHBAR
MORRIS, NICHOLS, ARSHT & TUNNELL
WILMINGTON, DELAWARE

Attorneys for Respondent Trans World Airlines, Inc.

No. 92-1451

IN THE

Supreme Court of the United States

October Term, 1992

TRAVELLERS INTERNATIONAL AG.,
Petitioner,

v.

TRANS WORLD AIRLINES, INC.,
OFFICIAL UNSECURED CREDITORS' COMMITTEE
OF TRANS WORLD AIRLINES, INC., AND
SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION FOR RESPONDENT TRANS WORLD AIRLINES, INC.

Petitioner has submitted a supplemental brief suggesting that *Germain v. Connecticut National Bank*, No. 92-5046, 1993 U.S. App. LEXIS 5815 (2d Cir. Mar. 24, 1993), *suggestion for reh'g in banc pending*, supports the grant of its petition for certiorari. Petitioner is wrong. *Germain* does not involve the right to jury trial in preference actions and presents no conflict with the Third Circuit's application of *Langenkamp v. Culp*, 498 U.S. 42, 111 S. Ct. 330 (1990).

Germain involved a lender liability action brought by a bankruptcy trustee. At issue was whether the trustee's right to a jury trial in the lender liability action was affected by the defendant's filing of a proof of claim. The Second Circuit found that resolution of the lender liability action could have "no effect whatever" on the allowance of the defendant's claim, and that the lender liability

action therefore was not part of the equitable claims allowance process. 1993 U.S. App. LEXIS 5815 at *9-10.

The Second Circuit in *Germain* distinguished the action before it from preference actions controlled by *Langenkamp*. It emphasized that preference actions do affect the allowance of a creditor's claim, and are part of the claims allowance process. 1993 U.S. App. LEXIS 5815 at *10 (citing 11 U.S.C. § 502(d), and observing that "before a claim may be allowed, a court must resolve any preference issues that the trustee might raise"). *Germain* therefore supports, and presents no conflict with, the Third Circuit's holding that *Langenkamp* controls Petitioner's jury demand in this preference action.[1]

Similarly, the determination in *Germain* that a lender liability action involves "private rights" unrelated to the bankruptcy claims allowance process has nothing to do with this preference action. As this Court already determined in *Langenkamp*, preference actions against defendants who have filed proofs of claim are intertwined with the bankruptcy claims allowance process. *See* 498 U.S. at____, 111 S. Ct. at 331. The Third Circuit correctly applied *Langenkamp* to this preference action, and was not required to analyze the impact of other types of actions on the bankruptcy restructuring process.

Petitioner's conclusory assertions about confusion and division in the courts of appeals do not withstand scrutiny. The Third Circuit's decision correctly applies the clear and controlling precedents of this Court, and comports fully with the decisions of other federal courts. No further guidance is needed on the questions set forth in the Petition.

---

[1] Petitioner's characterization of the Third Circuit's decision as applying to *"any* proof of claim" (Supp. Br. at 2) is inaccurate, and creates no conflict with *Germain*. The Third Circuit merely applied the *Langenkamp* rule that filing a proof of claim precludes a jury trial in a preference action, and made no broad pronouncements concerning the effect of filing a proof of claim on other types of actions.

CONCLUSION

For the foregoing reasons as well as those contained in Respondent's brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully Submitted,

WILLIAM B. B. SMITH
JONES, DAY, REAVIS & POGUE
3500 One Peachtree Center
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3242
(404) 521-3939

Counsel of Record

MICHAEL J. TEMPLETON
MARIANN MORGAN
ROBIN C. MURRAY-GILL
JONES, DAY, REAVIS & POGUE
599 LEXINGTON AVENUE
NEW YORK, NEW YORK 10022

KENNETH J. NACHBAR
MORRIS, NICHOLS, ARSHT & TUNNELL
1201 N. MARKET STREET
P. O. BOX 1347
WILMINGTON, DELAWARE 19899

Attorneys for Respondent Trans World Airlines, Inc.

Dated: April 20, 1993